

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	
<p><b>Plaintiffs:</b> ANTHONY LOBATO, et al., and</p> <p><b>Plaintiff-Intervenors:</b> ARMANDINA ORTEGA, et al.</p> <p>v.</p> <p><b>Defendants:</b> THE STATE OF COLORADO, et al.</p>	
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## **PLAINTIFFS' TRIAL BRIEF**

Plaintiffs, Anthony Lobato, et al., ("Plaintiffs"), hereby submit their Trial Brief.

## **I. STATEMENT OF THE CASE**

This is an action for declaratory and injunctive relief brought pursuant to C.R.C.P. 57 and 65 and the Uniform Declaratory Judgments Law, C.R.S. §§13-51-101, *et seq.*

Plaintiffs claim that as a result of irrational and inadequate funding of public education, the Defendants are failing to provide for a “thorough and uniform system” of public education and that the public school finance system fails to provide the financial resources necessary for local boards of education to exercise control of instruction in their schools. Therefore, Plaintiffs claim that Colorado’s public school finance system violates their rights guaranteed by article IX, sections 2 and 15 of the Colorado constitution.

This case is on remand from the Colorado Supreme Court decision in *Lobato v. State of Colorado*, 218 P.3d 358 (CO 2009) (*Lobato*). The Supreme Court summarized the principal points in its ruling as follows:

To be successful, [Plaintiffs] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a “thorough and uniform” system of public education. The trial court must give significant deference to the legislature’s fiscal and policy judgments. The trial court may appropriately rely on the legislature’s own pronouncements to develop the meaning of a “thorough and uniform” system of education. If the court finds that the current system of public finance is irrational, then the court must provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution.

218 P.3d at 374-75 [citation omitted].

## **II. THE CONSTITUTIONAL PROVISIONS AT ISSUE**

The Education Clause provides that the “general assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” The “thorough and uniform system” mandate is a substantive guarantee of

a constitutionally adequate, quality education for all Colorado residents of school age. *Lobato*, 218 P.2d at 371. The general assembly adopted this interpretation over a decade ago:

[The Education Clause] requires the general assembly to provide for the establishment and maintenance of a thorough and uniform system of free public schools. The state therefore has an obligation to ensure that every student has a chance to attend a school that will provide an *opportunity for a quality education*.

C.R.S. §22-30.5-301(1) (2011)<sup>1</sup> (emphasis added).

As an integral part of its education system, the State must provide sufficient financial resources for the public schools in a manner that is rationally related to the accomplishment of mandate of the Education Clause. *Lobato*, 218 P.3d at 363. A school finance system that fails to provide funding sufficient to establish and maintain a thorough and uniform system of free public schools violates the Education Clause. The general assembly has declared that the Public School Finance Act of 1994 (the PSFA) “is enacted in furtherance of the general assembly’s duty under [the Education Clause] to provide for a thorough and uniform system of public schools throughout the state”.<sup>2</sup> §22-54-102(1).

The Local Control Clause directs the general assembly to “provide for the organization of school districts of convenient size”, governed by locally elected boards of education, and invests the directors of the local boards of education with the “control of instruction in the public schools of their respective districts”. Control of instruction by locally elected school boards (often referred to as “local control”) is a necessary element in meeting the substantive mandate of the

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<sup>1</sup> Unless otherwise specified, all statutory citations are to the Colorado Revised Statutes (2011).

<sup>2</sup> See *Board of County Comm’rs of Douglas County CO v. Bainbridge, Inc.*, 929 P.2d 621, 709 (Colo. 1997) (“The purpose of the Public School Finance Act of 1994 . . . is to further the General Assembly’s constitutional duty to provide a thorough and uniform system of public schools throughout the state.”)

Education Clause.<sup>3</sup> In the School District Organization Act of 1992 the general assembly declared that:

[T]his article is enacted for the general improvement of the public schools in the state of Colorado; for the equalization of the benefits of education throughout the state; *for the organization of public school districts in the state . . . in order to provide for the maintenance of a thorough and uniform system of free public schools throughout the state*; and for a more responsible expenditure of public funds for the support of the public school system of the state.

§22-30-102(1) (emphasis added).

In *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1022-23 (CO 1982) (*Lujan*), the Colorado Supreme Court held that preserving local control of instruction was the legitimizing state purpose for the then-current system of public school finance. A system of public school finance that fails to provide sufficient financial resources to the school districts to permit local boards of education to provide the services, instructional programs, materials, and facilities necessary to meet the substantive mandate of the Education Clause violates the Local Control Clause.

### **III. THE DEFINITION AND MEASURE OF A THOROUGH AND UNIFORM SYSTEM OF PUBLIC SCHOOLS**

The Supreme Court directed the trial court to “develop the meaning” of the Education Clause in light of the legislative pronouncements of the general assembly. This is consistent with judicial deference to the policy judgments of the legislative branch. Particularly over the past two decades, the general assembly has frequently construed the “thorough and uniform” mandate both at a general level and in the extensive and detailed provisions of the “standards-based education system” that has revolutionized public education during that time.

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<sup>3</sup> See *Owens v. Colorado Congress of Parents, Teachers and Student*, 92 P.3d 933, 938-9 (Colo. 2004).

Plaintiffs accept these statements and the education system enacted in their service as a baseline for interpreting the Education Clause and assessing the rationality of the system of public school finance.<sup>4</sup> If the finance system is not rationally related to accomplishing standards-based education at a minimum, it cannot be rationally related to any broader definition of a thorough and uniform system of public schools.

Following the general assembly's lead, at a policy level, a thorough and uniform system of public schools must assure that all students graduate with the knowledge and skills necessary to (1) participate effectively as citizens of Colorado and the United States; (2) engage productively and competitively in the workforce; and (3) be successful lifelong learners.<sup>5</sup>

This statement of the purpose of public education is characteristic of the American vision of public education as cited in other courts:

In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) on the facts that 'some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . .,' and that 'education prepares individuals to be self-reliant and self-sufficient participants in society.'

*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 112 (1973), Marshall, J., dissenting  
[footnote omitted].<sup>6</sup>

In service of this purpose, the national government has provided political and material support for public education throughout the development of the nation. Colorado's admission to

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<sup>4</sup> As presented in Plaintiffs' Brief in Opposition to Defendants' Motion for Determination of Questions of Law Pursuant to C.R.C.P. 56(h), state courts have held that standards-based education and accountability systems similar to those adopted by the Colorado general assembly are a necessary part of a constitutional education system. *See, e.g., Montoy v. State of Kansas*, 112 P.3d 923, 939 (KS 2005); *Claremont School District v. Governor*, 147 N.H. 499, 795 A.2d 744, 751-52 (NH 2002).

<sup>5</sup> For a more thorough discussion of this standard, *see* Section VII.A., *infra*.

<sup>6</sup> Justice Marshall further notes that all fifty states' constitutions originally included public education provisions, although South Carolina and Mississippi amended theirs in reaction to *Brown v. Board of Education*, 347 U.S. 483 (1954). *Rodriguez, San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 111-12 (1973).

the Union was conditioned upon its promise to constitutionally secure the right to an education to its citizens. *Pauley v. Kelley*, 162 W.Va. 672, 677, 255 S.E.2d 859, 864 (1979).<sup>7</sup> From the beginning of the nation, each state was granted federal lands in trust for the use of the common or public schools. *Brotman v. East Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 887 (Colo. 2001). The Colorado Enabling Act dedicates two sections in every township to that purpose. Enabling Act §7.

The Education Clause was not adopted in a societal vacuum. It is inescapably obvious that the drafters of the Colorado constitution were motivated by the same vision as our nation and neighboring states. In discussing their constitution (Wyo. Const. art. 7, §§ 1 and 9), the Wyoming Supreme Court stated that:

At the time these clauses were used in the wording of the education article at Wyoming's constitutional convention in 1889, similar education provision were found in every State constitution, reflecting the contemporary sentiment that education was vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state.

*Campbell County Sch. Dist. v. State of Wyoming*, 970 P.2d 1238, 1259 (Wyo. 1995) [citations omitted]. From this purpose, the Wyoming court derived the basic mandate of their state's education clauses:

[W]e can conclude the framers intended the education article to provide an education system of a character which provides Wyoming students with a uniform opportunity *to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.*

*Id.* [emphasis added; citation omitted].

The Colorado general assembly has expressly linked this policy to student achievement

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<sup>7</sup> Citing 1-8 *The Federal and State Constitution, Colonial Charters, and Other Organic Laws of the States, Territories, and the Colonies Now or Heretofore Forming the United States of America* (F. Thorpe ed. 1909).

of statewide academic content standards as measured by statewide assessments (standardized tests):

Every resident of the state six years of age or older but under twenty-two years of age has a fundamental right to a free public education that assures that such resident shall have the opportunity to achieve the content standards adopted pursuant to this part 4 [Education Reform] at a performance level which is sufficient to allow such resident to become an *effective citizen of Colorado and the United States, a productive member of the labor force, and a successful lifelong learner.*

§22-7-403(2) [emphasis added].<sup>8</sup>

The general assembly has also established the standards-based education system as the foundation of the system of statewide “education accountability” by which it measures the performance of public school districts in fulfilling the thorough and uniform mandate:

[An effective system of statewide education accountability] [h]olds the state, school districts, the institute, and individual public schools accountable for performance on the same set of indicators and related measures statewide, ensures that those indicators and measures are aligned through a single accountability system, to the extent possible, that *objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students* at the state, school district or institute, and individual public school levels, and, as appropriate, rewards success and provides support for improvement at each level.

§22-11-102(1)(d) (emphasis added).

Thus, the general assembly has fundamentally linked the Education Clause mandate to the standards-based education system and specifically to student attainment of the academic standards as demonstrated by performance on statewide assessments. The *Lobato* Court particularly noted that the State’s “education reform statutes with proficiency targets and content standards” may be used to evaluate the constitutionality of the legislature’s actions. *Lobato*, 218 P.3d at 372, fn. 17. At the very least, the public school finance system must be rationally related

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<sup>8</sup> This provision was originally codified in 1993 as §22-53-403(2).



to accomplishing the requirements of the State's own standards-based education and education accountability systems.

#### **IV. A RATIONAL FINANCE SYSTEM MUST ALIGN WITH THE GOALS OF THE EDUCATION SYSTEM**

A rational system certainly must align education funding with the goals and methods legislatively identified as the thorough and uniform system of public schools. That is to say, the public school finance system must at least be rationally related to accomplishing the mandates of the standards-based education system. This alignment must be made in a disciplined and transparent manner. Dr. Linda Darling-Hammond, who will testify for the Plaintiffs, has described such a system as one of shared accountability:

In a system of shared accountability, states would be responsible for providing sufficient resources, for ensuring well-qualified personnel, and for adopting standards for student learning. School districts would be responsible for distributing school resources equitably, hiring and supporting well-qualified teachers and administrators (and removing those who are not competent), and encouraging practices that support high-quality teaching and learning. Schools would be accountable for creating a productive environment for learning, assessing the effectiveness of their practices, and helping staff and parents communicate with and learn from one another.<sup>9</sup>

Dr. Darling-Hammond describes the principles of a financing system that could support such an effort in a rational way:

[S]tate funding should be allocated to students based on equal dollars per student adjusted or weighted for specific student needs, such as poverty, limited English proficiency, and special education status. *Establishing the per pupil base so that it represents what an adequate education to meet the standards actually costs, and determining the weights so that they accurately reflect the costs of meeting differential pupil needs is critically important* for such a scheme to work well. This weighted student formula allocation should also be adjusted for cost-of-living differentials across large states, and should be supplemented with funds to address unavoidably variable costs such as transportation, which is necessarily extensive in large, sparse rural districts, and school construction, which varies by the age of buildings and changing enrollment patterns.

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<sup>9</sup> *The Flat World and Education*, at 305, L. Darling-Hammond (2010 Teachers College, Columbia Univ.).

Developing such an equitable, reliable base of funding is critically important so that districts can maintain the foundational elements of quality education, and can make locally appropriate, strategic decisions about how to spend resources to achieve results.<sup>10</sup>

Plaintiffs will present the results of a “costing-out study” performed by Augenblick, Palaich and Associates (APA) that follows those principles. APA uses as models both successful Colorado school districts and the professional judgment of Colorado educators to analyze the resources necessary and actual costs to provide an education sufficient to meet the student achievement requirements of the Colorado standards-based education system. The APA study establishes both that (1) school funding can be analyzed and quantified by rational methods and that (2) the existing finance system is so profoundly underfunded that it cannot be considered rational or adequate.

## **V. THE SCHOOL FINANCE SYSTEM AND THE EDUCATION SYSTEM ARE COMPLETELY UNRELATED TO EACH OTHER**

A system of public school finance that is rationally related to meet the mandate of the thorough and uniform clause must (1) identify the standard and measure of the education to be provided; (2) determine the resources needed to accomplish that goal; and (3) institute and fund a finance system that funds the necessary resources. The standards-based education system addresses the first of these requisites – it sets a highly articulated standard of student achievement as the measure of a thorough and uniform system of public schools. However, no effort has been made to address the second and third. The State and the State Board of Education have completely defaulted in their constitutional responsibility to align the school

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<sup>10</sup> *Id.*, at 311 (emphasis added).

finance system to the mandates of the Education Clause as implemented through the standards-based education and accountability systems.

In 1993, the general assembly adopted HB 93-1313, that committed the State to develop and implement standards-based education as the anchor to the educational accountability system. This Act was the foundation for the transformation of public education in Colorado. In 1994, the general assembly adopted the Public School Finance Act of 1994 (the PSFA), the centerpiece of the school finance system. The PSFA established the basic funding mechanism for school district general fund (operating) revenues that has been in place since then. From this contemporaneous starting point, the two systems, which were not aligned to begin with, have radically diverged.

When it was enacted, the PSFA carried forward preexisting school district expenditure levels without any effort to analyze their relationship to the actual costs to provide an education of any particular quality. Since then, the PSFA has been adjusted annually by a marginal percentage increase or, more recently, decrease in the statewide base per-pupil funding amount. However, the PSFA has never been adjusted to address the costs associated with the progressive implementation of the standards-based education and education accountability systems.

The PSFA was adopted *before* the implementation of the standards-based education system and, if only for that reason, cannot possibly relate to funding the costs of that system. They have never been changed to respond to those changing costs. As a result, the PSFA funding levels are now and have for many years been completely disconnected from the real, knowable funding needs of a thorough and uniform system of public education.

Educators from the Plaintiff districts and across the State will testify to the substantial increases in the resources and funding necessary to provide an education that can meet the requirements of standards-based education and accountability. They will testify to the failure of the finance system to address these costs and the impact of that failure on their ability to provide an education that meets the needs of all students. School superintendents, finance officers, principals, and teachers will describe the obstacles and limitations imposed by an irrational, inadequate, and unplanned finance system on the education they are able to provide to the children entrusted to their care.

The Defendants do not dispute that the public school finance system has never been studied, much less aligned, to fund the costs of providing the educational resources necessary to meet the requirements of the thorough and uniform clause. Instead, they attempted to avoid the issues articulated in *Lobato*, arguing that the overall level of K-12 education funding is “rational” in light of other legislative funding priorities and the procedural requirements (described erroneously as “restrictions”) of the TABOR Amendment. Now that these arguments have been disposed of, Defendants fall back on the bankrupt notion that it is *impossible* to estimate the costs of a constitutional education – a notion that, if accepted compels the conclusion that there can be no such thing as a rational finance system, in defiance of the Supreme Court’s ruling. They also attempt to shift the blame to the school districts, pointing to “islands of success” as indicators that school districts are ineffective overall.

But the Defendants cannot escape the fact that they have no evidence or even information to rebut the conclusion that the finance system is completely divorced from the reality of the education system enacted by the general assembly in the name of the Education Clause.

## VI. LOCAL CONTROL OF INSTRUCTION

The *Lobato* Court held that Education Clause analysis must determine both that “thorough and uniform educational opportunities are available through state action in each school district” *and* that “each school district must be given the control necessary to implement this mandate at the local level”. 218 P.3d at 371 [citations omitted]; *see also Owens v. Colorado Cong. of Parents, Teachers & Students*, 92 P.3d 933, 947-48 (CO 2004) (Kourlis, J. dissenting). Thus, compliance with the Education Clause incorporates local control of instruction, as mandated by the Local Control Clause (article IX, section 15). This should be particularly obvious here, since local control is, or at least was in 1982, the “legitimate state purpose” upon which the school finance system depends. *Lujan*, 649 P.2d at 1022-23.

The Colorado constitution allocates governing authority over the public schools between local boards of education with authority to “control instruction” and the State Board, which exercises “general supervision” of the public schools under article IX, section 1. In *Board of Educ. of Sch. Dist. No.1 v. Booth*, 984 P.2d 639, 648 (CO 1999) (*Booth*), the Supreme Court defined the constitutional roles of the State Board and the local boards under these provisions. Beginning with the State Board:

The constitutional framers contemplated general supervision to include direction, inspection, and critical evaluation of Colorado’s public education system from a statewide perspective, [] they intended the State Board to serve as both a conduit of and a source for educational information and policy, and [] they intended the General Assembly to have broad but not unlimited authority to delegate to the State Board “powers and duties” consistent with this intent.

The Court then held that “control of instruction requires power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction.” The Local Control Clause is a constitutional grant of “undeniable authority” to local boards of

education to control instruction in the public schools within their respective districts. 984 P.2d 639, 646.<sup>11</sup> A “generally applicable law triggers control of instruction concerns when applied to specific local board decisions likely to implicate important education policy.” General statutes “must not have the effect of usurping the local board’s decision-making authority or its ability to implement, guide, or manage the educational programs for which it is ultimately responsible.” 984 P.2d at 649.

The Public School Finance Act and the other funding statutes are generally applicable laws subject to these constitutional limitations. Local control and school finance are inseparably linked. In *Lujan*, the Supreme Court held that for purposes of equal protection analysis:

We find that utilizing local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over public schools. The use of local taxes affords a school district the freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount. It also enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent. Some communities might place heavy emphasis on schools, while others may desire greater police or fire protection, or improved streets or public transportation. Finally, local control provides each district with the opportunity for experimentation, innovation, and a healthy competition for educational excellence.

*Lujan*, 649 P.2d 1023 [citation omitted].

The school finance system dictates the total amount of funds available to each school district and the methods by which those funds may be obtained. Local school boards have no discretion in determining the amount or the sources of their funding. Inadequate funding prevents school districts from offering their children the public education mandated by standards-based education. The additional goals of local control described in *Lujan* are beyond even the most successful school districts.

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<sup>11</sup> Colorado is one of only six states with an express local control provision in its constitution, underscoring the importance of that concept in this state. *Board of Ed. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 646 (CO 1999).

Most critically, insufficient funding impedes school district's ability to accomplish the ambitious goals of educational accountability. Present school district funding levels bear no intentional relationship to the costs of meeting state imposed performance goals. Failure to accomplish these goals leads to regulatory consequences of the most profound concern to boards of education, including state administered "major restructuring" of schools impacting at least local curriculum, school staffing, school schedules, and student assessment and training, but also school closures, privatization, or conversion to charter status. §22-7-609.3(3). Further, failure to meet state performance standards due to insufficient funding results in state administered school district reorganization. §§22-11-204(3), 22-30-105(1)(c).

This implicates two of the guiding principles of local control identified in *Booth*: (1) The generally applicable school finance laws impose statutory constraints that "have the effect of usurping the local board's decision-making authority [and] its ability to implement, guide or manage the educational programs for which it is ultimately responsible;" and, (2) By failing to fund public education adequately or rationally, those laws interfere with specific local board decisions affecting important education policy at the local level. *Booth*, 984 P.2d at 649.

In the name of the Education Clause, the State has radically reorganized public education. However, there has been no corresponding reform of school finance. School districts are left to meet 21<sup>st</sup> century education standards with 1980s funding, and it cannot be done. As a result, the beneficiaries of public education, most directly all Colorado school children, but including the State itself, are and have been for decades denied the opportunities intended by the Education Clause.

## **VII. THE PUBLIC SCHOOL FINANCE SYSTEM**

Funding for public education is derived from local property taxes, state funds, and, to a significantly lesser degree, federal funds. The most significant source of general fund or operating funds is the PSFA. The Court is referred to Justice Mullarkey's summary description of the PSFA in *Mesa County Board of County Comm'rs v. State of CO*, 203 P.3d 519, 525-26 (CO 2009) (*Mesa County*).

In school year 2010-11, PSFA funding totaled approximately \$5.4 billion, of which school district property tax and other local sources contributed \$2.0 billion (37%) and the state contributed \$3.4 billion (63%). This total was, however, reduced by 12.97% to some \$5.2 billion by action of the general assembly. The State also provides general fund moneys through "categorical programs" that supplement funding for programs such as special education, English language proficiency, transportation, and vocational education. In 2010-11, funding for all categorical programs totaled \$231 million.

**A. The Public School Finance Act of 1994.** The PSFA provides a complex formula to set the financial base of support for public education in each school district, referred to as its "total program". §22-54-104(1)(a). However, in its simplest terms, a school district's total program is the product of its pupil population times its per pupil funding level.

Calculation of a district's total program begins with a statutory "statewide base" per pupil funding level. In 2010-11, the statewide base was \$5,529.71 per pupil. §22-54-104(5). The statewide base was first set in 1994 and has been adjusted annually by a small percentage to its present level. The statewide base is adjusted for each school district by application of various



factors, such as a cost-of-living adjustment and an enrollment size factor, to produce the district's specific "per pupil funding". §22-54-104(3).

The district per pupil funding amount is multiplied by the district's "funded pupil count", which is an actual count of students (or full-time equivalent) enrolled and attending school in the district. §22-54-103(7). This total is then adjusted to add funding provided to the districts based on the number and concentration of their "at-risk" (poverty) students, online enrollment, and "ASCENT" (fifth year high school) pupils. The result is the district's total program: *except*, in 2010-11 a "negative factor" is then *subtracted* to reduce the preliminary total program by an amount set by the general assembly. In 2010-11, the negative factor reduced each district's total program by 12.97%.

Each school district's total program is funded by a combination of state and local tax revenues. The "local share" consists of the proceeds from a mill levy upon the assessed valuation of the taxable property within a school district's boundaries and, to a much lesser degree, "specific ownership tax". §22-54-106(1)(a)(I).

School districts are controlled and strictly limited by law in the local revenues they can raise, receive, and expend. Their local tax levy is dictated by the general assembly. *See Mesa County, supra*. A school district's authority to obtain funding by local property taxation is limited to the *lowest* of (a) the number of mills it levied in the preceding year, (b) the number of mills necessary to pay its entire total program, less the minimum state share funding received, (c) the maximum number of mills allowed by TABOR, or (d) twenty-seven mills. §22-54-106(2)(a). No school district may certify a levy for its general fund in excess of its statutory authority. §22-54-106(5)(a).

The “state share” is the difference between the school district’s total program and its local share.<sup>12</sup> The state share comes primarily from the state general fund (88% in 2010-11), the State Education Fund (8%), and a portion of the rent from state school lands and federal mineral lease money (4%).

The PSFA permits school districts a limited option to supplement their total program with additional local revenues by increasing their local mill levy through an “override election” process. §22-54-108. Local override revenues are not equalized by state funds; a school district’s ability to raise override revenues is directly correlated to its local property tax base. The total additional local revenues that may be authorized pursuant to an override election cannot exceed the greater of 25% of the district’s total program or \$200,000. Once a district reaches the limit, it cannot hold another override election.

**B. Categorical Program Funding.** In addition to PSFA total program funding, school districts may receive state funding for programs designed to serve particular groups of students or particular student needs through “categorical” programs. Categorical programs include special education (ECEA) (\$127.4 million in 2010-11); public school transportation (\$49.5 million); vocational education (\$23.3 million); English language proficiency (ELPA) (\$12.4 million), gifted and talented students (\$9.1 million); expelled and at-risk services (\$7.5 million); comprehensive health education (\$1.0 million); and small attendance centers (\$0.9 million). Each of these programs has specific conditions and limitations.

**C. Capital Construction Funding; Bonded Indebtedness.** PSFA and categorical funding do not pay for capital construction. School districts must fund the costs of acquiring

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<sup>12</sup> Every district is entitled to receive a minimum state funding amount. §22-54-106(1)(b).

buildings or grounds; constructing, remodeling, repairing, or making additions to school buildings or improving school grounds; and equipping and furnishing school buildings by contracting bonded indebtedness through voter approval.<sup>13</sup>

A school district's bonded indebtedness is repaid solely through a tax levy upon the taxable property within its boundaries. §22-42-118. Each school district is limited in the amount of bonded debt it may incur to the greater of 25% of the assessed value of the taxable property within the district or six percent of the actual value of the taxable value. §22-44-104(1.3). Thus, the ability of a school district to fund capital construction is directly related to its local property tax base.

In 2011-12, the value of the taxable property in school districts, expressed as dollars of assessed valuation per pupil, ranges from \$13,146 to \$2,722,455. Eighteen school districts have a local assessed valuation per pupil in excess of one million dollars; eighty-six have a local assessed valuation per pupil below \$100,000 per pupil. As can be seen, school districts have radically disparate ability to fund bonded indebtedness. Many school districts lack the bonding capacity to raise sufficient funds to build a new elementary school.

The "Building Excellent Schools Today Act" (BEST)<sup>14</sup> adopted in 2008 recognized that:

Colorado school districts . . . have differing financial abilities to meet students' fundamental educational needs, including the need for new public schools and renovations or for controlled maintenance at existing public schools so that unsafe, deteriorating, or overcrowded facilities do not impair students' abilities to learn.<sup>15</sup>

BEST provides limited State assistance for school districts that have "difficulty" financing capital projects based on an application process and subject to a "local match" requirement. §22-

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<sup>13</sup> §§22-42-101, *et seq.*

<sup>14</sup> §§22-43.7-101, *et seq.*

<sup>15</sup> §22-43.7-102(1)(a).

43.7-109. BEST is at most a step in the right direction but is not adequate to meet the overwhelming capital needs of the State's school districts.

#### **D. Summary of the School Finance System**

The inequities and irrationalities that were built into the funding levels in 1994 have never been addressed, much less corrected. From 1994 to the present, annual adjustment to district total program funding were made by incremental percentage increases to the 1994 base, thus perpetuating the problem. Real levels of funding persistently fell throughout this period. Until the passage of Amendment 23, funding increases were typically less than the cost of living, even during periods of significant economic growth. At no time were adjustments made to reflect the known or knowable real costs of meeting the mandates of the standards-based education and accountability systems or the Education Clause. Of course, in recent years, state budget cuts have substantially exacerbated the problem, forcing cuts in personnel and program that are very detrimental to the goals of public education.

### **VIII. EDUCATIONAL ACCOUNTABILITY AND THE STANDARDS-BASED EDUCATION SYSTEM**

Beginning in the early 1990s and continuing through the present, the general assembly initiated and has progressively implemented a revolution in the public education system. Prior to that time, the underlying mission of the public education system was to provide “universal access” or the opportunity for all students to attend school without discrimination based on race, gender, ethnicity, handicapping condition, poverty, or language barriers. With the adoption of the Educational Accountability Act of 1993<sup>16</sup>, the focus was expanded beyond mere *access* to

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<sup>16</sup> C.R.S. §§22-7-401, *et seq.* Adopted in 1993 as HB 93-1313 and codified as Part 4 of title 22, article 53, the Education Accountability statutes, including Part 4, were amended and recodified in 1997 by HB 97-1219.

student *achievement* – what should students be learning and how can we determine if they are learning?

This revolution was instituted through the enactment of a series of exceptionally thorough and detailed statutes. The following sections describe some, but certainly not all, of the principal legislation over the past decade, focusing on the Education Reform Provisions of 1993, the No Child Left Behind Act of 2002, the Preschool through Postsecondary Education Alignment Act of 2008, and the Education Accountability Act of 2009. The purpose is to demonstrate the densely interlocked relationships between the Education Clause, the general assembly’s statements of educational policy, the methods of standards-based education, the use of an assessment process as the tool for measuring student, school, and school district performance, and the implementation of state accreditation of schools.

All of this assists in illustrating the breadth and depth of the changes the general assembly has brought about in public education and the vast expansion of the expectations placed upon schools and school districts. The immediate point being, of course, that there has been no comparable effort to provide the financial resources absolutely critical to accomplishing these goals.

#### **A. The Education Reform Provisions of 1993: Standards-Based Education**

The 1993 Education Reform provisions begin with the finding that “children can learn at higher levels than are currently required of them”, and that it is the “obligation of the general assembly, the department of education, school districts, educators, and parents to provide schools that reflect high expectations and create conditions where these expectations can be met.” On these premises, the general assembly initiated a “system of standards-based education” to serve

as the “anchor for education reform with the focus of education including not just what teachers teach, but what students learn.” This standards-based system has “the ultimate goal . . . to ensure that Colorado's schools have standards which will enable today's students of all cultural backgrounds to compete in a world economy in the twenty-first century.” §22-7-401.

Standards-based education is founded on a system of *content standards, programs of instruction, and assessments*. A content standard is a “compilation of specific statements of what a student should know or be able to do relative to a particular academic area.” §22-7-402(4).<sup>17</sup>

“Programs of instruction” are “a description of the educational experiences and curriculum which will enable a student to achieve content standards”. §22-7-402(10). And “assessments” are “the methods used to collect evidence of what a student knows and is able to do”. §22-7-402(1).<sup>18</sup>

A student’s assessment results provide the measure of his or her *performance level*, defined as the “level of achievement by a student on an assessment relative to a content standard.” §22-7-402(9). This definition of performance level is expressly tied to a qualitative level of acceptable student achievement:

For graduating students, [an] *acceptable performance level* shall mean the student has the subject matter knowledge and analytical skills that all high school graduates should have for *democratic citizenship, responsible adulthood, postsecondary education, and productive careers*. [Emphasis added.]

The general assembly further affirmed that the opportunity to attain such a performance level is a “fundamental right”:

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<sup>17</sup> The term “standard” itself was not defined in the 1993 Education Reform statute, but is defined in the 2008 Preschool to Postsecondary Education Alignment Act (CAP4K) as “a clear, measurable, learning target for what a student should know or be able to do relative to a particular instructional area.” §22-7-1003(22)

<sup>18</sup> CAP4K expands on this definition by adding “and to measure a student’s academic progress toward attaining a standard.” §22-7-1003(1).

Every resident of the state six years of age or older but under twenty-two years of age has *a fundamental right to a free public education that assures that such resident shall have the opportunity to achieve the content standards* adopted pursuant to this part 4 [Education Reform] at a performance level which is sufficient to allow such resident to become an effective citizen of Colorado and the United States, a productive member of the labor force, and a successful lifelong learner.<sup>19</sup>

§22-7-403(2) [Emphasis added].

The State Board was directed to adopt “state model content standards” and “state assessments” that are aligned with those content standards and that “specify an acceptable performance level on each such state assessment.” §22-7-406(1)(a) and (3). School districts were required to adopt district content standards that “meet or exceed the state model content standards,” to align curriculum and programs of instruction with those content standards, “and to ensure that each student will have the educational experiences needed to achieve the adopted content standards.” §§22-7-407(1) and (2).

Since 1993, CDE has progressively implemented the state assessments adopted by the State Board, referred to as the “Colorado state assessment program” (CSAP). §22-7-409. Today, the standardized assessment program includes annual testing of all students in grades 3 through 10 in reading, writing, and mathematics; in grades 5, 8, and 10 in science; and the Colorado ACT in grade 11.

Thus, the general assembly has continuously affirmed since 1993 that at the heart of its education reform efforts are two interlocking affirmations: (1) the constitutional right to an education that meets qualitative standards defined with reference to effective citizenship, economic productivity, and lifelong learning, and (2) toward that end, the right to the opportunity

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<sup>19</sup> This provision was originally codified in 1993 as §22-53-403(2).

to achieve statewide content standards in multiple academic areas as assessed by statewide standardized testing.

**B. The No Child Left Behind Act of 2001 (NCLB): Universal Proficiency and Adequate Yearly Progress (AYP)**

As this system developed, with the impetus of the federal No Child Left Behind Act of 2001 (NCLB)<sup>20</sup>, the goals of public education expanded beyond setting standards of student achievement to accomplishing “*universal proficiency*” in achieving those standards. The stated congressional purpose for NCLB was “to ensure that *all children* have a fair, equal, and significant opportunity to obtain a high-quality education and *reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.*”

[Emphasis added.]

NCLB mandated strategies that are essentially identical to those adopted in Colorado education reform legislation, including establishing challenging state academic standards that permit measuring progress against common expectations for student academic achievement; aligning academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials with the state academic standards; holding states, school districts, and schools accountable for improving academic achievement of all students, identifying and turning-around low-performing schools, and providing high-quality alternatives to students in low-performing schools; and improving accountability, teaching, and learning by the use of state assessment systems designed to ensure that students meet academic achievement and content standards and are increasing achievement overall.

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<sup>20</sup> 20 U.S.C. §6301.



NCLB particularly sought to meet the educational needs of low-achieving children in high poverty schools, limited English proficient children, migratory children, children with disabilities, Native American children, neglected or delinquent children, and young children in need of reading assistance; and to close the achievement gap between high- and low-performing children, especially between minority and non-minority children and between disadvantaged and more advantaged children.

Colorado elected to conform to the requirements of NCLB in 2002, when the State Board adopted the Colorado Consolidated State Plan. In 2008, the Preschool through Postsecondary Education Alignment Act (CAP4K) incorporated NCLB and the State Plan into the Colorado education accountability system.

NCLB obligates the state and all school districts to accomplish comprehensive performance goals, including attaining *100% student proficiency* in reading/language arts, writing, and mathematics by 2013-14; assuring that all students will be educated in learning environments that are safe, drug free, and conducive to learning; and assuring that all students will graduate from high school. Attainment of the goal of 100% student proficiency by 2013-14 is measured by student results on statewide assessments.

Leading up to 2014, NCLB holds the State, school districts, and schools accountable for “adequate yearly progress” (AYP), defined as continuous and substantial annual improvement pursuant to annual performance targets that progressively lead to attainment of the goal of 100% proficiency.<sup>21</sup> AYP results are published for all students by school level and are “disaggregated”

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<sup>21</sup> For example, Colorado’s high school reading proficiency targets began in 2002-04 at 79.65% and advanced incrementally to 86.75% for 2011-13, leading up to 100% in 2014. For purposes of AYP, Colorado defines “proficient” to include students with CSAP results defined as “partially proficient”, “proficient”, and “advanced”. So “proficient” for AYP does not mean “proficient”.

to show the results by key student cohorts, including “free or reduced price lunch status” (poverty), English language proficiency, special program status (students with disabilities), ethnicity (Native American, Asian, Black, Hispanic, and White), migrants, and gender.

School districts and schools “make AYP” only if all students as a whole and all disaggregated groups of students meet performance targets in both reading and math. The Colorado State Report Card 2009-10<sup>22</sup> published by CDE states that in 2010 the State and 52% of Colorado school districts did *not* make AYP, and 85 school districts were identified for “program improvement” or “corrective action.” The results also demonstrate continuing “achievement gaps” among disaggregated groups. For example, on a statewide basis, Males, Blacks, Hispanics, English Language Learners, economically disadvantaged students, American Indians, students with disabilities, and migrant students did *not* meet the performance goal in high school reading/language arts (89.83% proficient); and only White and Asian students met the performance goal in high school mathematics (73.50%). Similarly, the state total graduation rate for the class of 2009 was 74.6%; but among disaggregated groups, only Asian, White, and Female students met or exceeded that rate.

**C. The Preschool to Postsecondary Education Alignment Act (CAP4K):  
Postsecondary and Workforce Readiness**

For the past decade, the prevailing standard in public education has been “universal proficiency”, and the statutory measure of a thorough and uniform system of public education has been the rate of progress in bringing all students, without exception, to a performance level of “proficient” or above. In 2008, the general assembly enacted the Preschool to Postsecondary Education Alignment Act (CAP4K) that expanded upon the goal, mandating that *all students*

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<sup>22</sup> [http://www.cde.state.co.us/FedPrograms/dl/danda\\_nclbstrptcrd\\_0910.pdf](http://www.cde.state.co.us/FedPrograms/dl/danda_nclbstrptcrd_0910.pdf).

shall graduate with the skills and knowledge necessary for “postsecondary and workforce readiness.” CAP4K is so pervasive and ambitious, that it almost defies summarization.

The general assembly found that although the education reform system had significantly increased the ability to “measure what each student knows and is able to demonstrate” and “learning and academic achievement among some students enrolled in the public schools,” it was “imperative” to “move to the “next generation of standards-based education”. §22-7-1002(1)(a) and (d). The legislative declaration emphasized three areas where improvement was necessary.

The first was to address the needs of students who were not succeeding:

Colorado continues to see a widening of the achievement gap, unacceptably high dropout rates throughout the state, unacceptably low numbers of high school graduates who continue into and successfully complete higher education, and an unacceptably high need for remediation among those students who do continue into higher education . . . . §22-7-1002(1)(b)

The second was to emphasize the historical civic purposes of public education:

From the inception of the nation, public education was intended both to prepare students for the workforce and to prepare them to take their place in society as informed, active citizens who are ready to both participate and lead in citizenship. In recent years, the emphasis in public education has been squarely placed on the areas of reading, writing, mathematics, and science, but it is important that education reform also emphasize the public education system's historic mission of education for active participation in democracy. §22-7-1002(1)(c)

The third was to meet the heightened educational demands of the twenty-first century:

With the advent of the twenty-first century and increasing expectations and demands with regard to the use of technology and higher-level critical thinking skills, coupled with increasing levels of national and international economic competition, it is now imperative that the state move to the next generation of standards-based education. §22-7-1002(1)(d)

To meet these imperatives, CAP4K mandated an ambitious revision of the standards-based system to accomplish a “seamless system of public education standards, expectations, and assessments” that aligns the public education system from “preschool through postsecondary and workforce readiness”:

This alignment will ensure that a student who enters school ready to succeed and achieves the required level of proficiency on standards as he or she progresses through elementary and secondary education will have achieved postsecondary and workforce readiness when the student graduates from high school, if not earlier. §22-7-1002(4)(a).

CAP4K tied its goals and purposes to a qualitative standard of student achievement consistent with a basic definition of constitutional “adequacy”.

Throughout the process of creating a seamless system of public education in Colorado, the state board of education and the Colorado commission on higher education must ensure that the standards for preschool through elementary and secondary education, culminating in postsecondary and workforce readiness, are sufficiently relevant and rigorous to ensure that *each student who receives a public education in Colorado is prepared to compete academically and economically within the state or anywhere in the nation or the world.* §22-7-1002(4)(e) [Emphasis added].

With CAP4K, the general assembly embedded two critical, expansive new concepts into the education reform system: “school readiness” and “postsecondary and workforce readiness.” These concepts intentionally pushed the boundaries of elementary and secondary education at the front end to include preschool and kindergarten, and at the culmination to include post-graduation preparedness.

School readiness is defined as “the level of development that indicates a child is able to engage in and benefit from elementary school classroom environments”. §22-7-1003(21). It refers to the “high-quality early learning experiences [that] are crucial to ensuring students’ ultimate success in school, in postsecondary education, in the workforce, and in life, generally.” §22-7-1002(2)(a). CAP4K directed the State Board to adopt a description of school readiness

and “ensure that, at a minimum, school readiness includes physical well-being and motor development, social and emotional development, language and comprehension development, and cognition and general knowledge.” §22-7-1004(1).<sup>23</sup>

Postsecondary and workforce readiness is defined as “the knowledge and skills that a student should have attained prior to or upon attaining a high school diploma.” §22-7-1003(15). The general assembly directed the State Board and the Colorado commission on higher education to negotiate and jointly adopt a description of postsecondary and workforce readiness that, among other goals, ensures “to the extent practicable” the accomplishment of a defined level of achievement:

[P]ostsecondary and workforce readiness requires a student to demonstrate creativity and innovation skills; critical-thinking and problem-solving skills; communication and collaboration skills; social and cultural awareness; civic engagement; initiative and self-direction; flexibility; productivity and accountability; character and leadership; information technology application skills; and other *skills critical to preparing students for the twenty-first-century workforce and for active citizenship*. §22-7-1008(1)(a)(V).

The general assembly directed the State Board to adopt new content standards from preschool through elementary and secondary education that are aligned to ensure that as the student advances he or she “will be able to demonstrate postsecondary and workforce readiness prior to or upon attaining a high school diploma.” These standards are also to be comparable “to the highest national and international standards that have been implemented successfully . . . .”

§§22-7-1005(3)(a) and (f)

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<sup>23</sup> In 2008, the State Board adopted the following definition of school readiness: “School Readiness describes both the preparedness of a child to engage in and benefit from learning experiences, and the ability of a school to meet the needs of all students enrolled in publicly funded preschool or kindergarten. School Readiness is enhanced when schools, families, and community service providers work collaboratively to ensure that every child is ready for higher levels of learning in academic content.”

<http://www.cde.state.co.us/cdedocs/ASMTRev/SchoolReadinessDescriptionResource.pdf>

In order to measure accomplishment of these standards, CAP4K mandates the adoption of a new assessment system designed to measure students' levels of attainment of the new standards and "academic progress toward attaining the standards and toward attaining postsecondary and workforce readiness." §22-7-1006(1)(a). The purposes of the new assessment system include maintaining a "high level of accountability across the state for students, schools, and school districts" and provide scores that are "*useful in measuring student academic performance, the academic performance of a school, and the academic performance of a school district* for purposes of state and federal accountability systems." §22-7-1006(1)(a)(V) and (VII).

Toward this end, the general assembly requires that the new assessment system incorporate "scoring criteria for measuring a student's level of attainment of a standard" based on performance on the assessments and "progress toward attaining postsecondary and workforce readiness." §22-7-1006(1)(c). The assessment system is also linked to the development of "a system of ratings for public schools that recognizes each school's success in supporting the longitudinal academic growth of the students enrolled in the public schools and in achieving adequate yearly progress as required by federal law." §22-7-1006(1)(d).

**D. The Education Accountability Act of 2009: School District Accreditation**

In order to assure accomplishment of the goals of CAP4K, in 2009, the General Assembly enacted the Education Accountability Act<sup>24</sup> which expanded preexisting law to create a system of statewide education accountability that incorporates the goals, standards, and assessments of CAP4K and expressly ties the standards based system, the CAP4K goals, and the accountability system to the qualitative guarantee of the Education Clause.

The Education Accountability Act is premised upon the legislative findings that an “effective system of statewide education accountability” focuses on “maximizing every student's progress toward postsecondary and workforce readiness and postgraduation success” by holding the state, school districts, and individual public schools accountable for performance on performance indicators and measures that are aligned through a single accountability system that “*objectively evaluates the performance of the thorough and uniform statewide system of public education* for all groups of students” at the state, school district, and individual public school levels. §22-11-102(1)(d) [emphasis added].

The state-administered system of school district accountability was introduced in 2000 with the adoption of what was then Part 7 of the “Educational Accountability Act.” At that time, the general assembly declared that the accountability program “should be designed to measure objectively the quality and efficiency of the educational programs offered by the public schools.” §22-7-102(2). The general assembly also directed a system of annual “school accountability reports” (SARs) founded on the Education Clause and with the purpose of informing parents

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<sup>24</sup> The Education Accountability Act of 2009 is codified as article 11 of title 22, C.R.S.

concerning the quality of their children's education and taxpayers how their tax dollars are being spent:

(a) While section 2 of article IX of the state constitution directs the general assembly to establish and maintain a thorough and uniform system of free public schools throughout the state, the wide variety of practices and curriculum among school districts and public schools throughout the state make it increasingly difficult to measure whether there is a thorough and uniform system of schools throughout the state;

(b) It is difficult for most parents to determine whether the public schools in which their children are enrolled are providing quality academic instruction in an environment that is conducive to learning;

(c) Business owners and other taxpayers in each school district have a right to know whether their tax dollars are being appropriately spent by the school district to provide students within the district with an opportunity for a quality education.

§22-7-601(1) (repealed 2009 with the enactment of the Education Accountability Act).

Like its predecessor, the Education Accountability Act is intended to report information concerning performance at the state, school district, and individual school level, §22-11-102(1)(b), and hold them "accountable on statewide performance indicators supported by consistent, objective measures." §22-11-102(3)(a). The Act directs CDE to determine annually the "level of attainment" of each public school, school district, and the state on three performance indicators: student longitudinal academic growth (measured by the "Colorado Growth Model"), student achievement levels on statewide assessments, and progress made in closing achievement and growth gaps in assessment results by disaggregated student groups. §22-11-204(1)(a). In addition, the CDE is to determine the level of attainment on postsecondary and workforce readiness indicators, including graduation, dropout rates and student performance on the Colorado ACT. §§22-11-204(1)(b) and (4).



The State Board is directed to “accredit” each school district annually pursuant to an “accreditation contract.” §§22-11-206(1) and (2). Each accreditation contract shall include the school district’s level of attainment on the performance indicators, the district’s implementation of its “performance plan,” the district’s implementation of its internal system for accrediting its schools, and its “good faith compliance” with statutes and regulations concerning budget and financial policies, accounting and financial reporting, and school safety. §§22-11-206(3) and (4).

As a result of the accreditation process, each school district is categorized as “accredited with distinction,” “accredited,” “accredited with improvement plan,” “accredited with priority improvement plan,” or “accredited with turnaround plan.” §22-11-207(1). The state board is directed to develop “objective, measurable criteria” to be applied in determining a district’s accreditation category, with the greatest emphasis on attainment of the performance indicators.” §22-11-207(2). Beginning in 2010, each school district and individual school’s performance is published by the CDE as its “District (or School) Performance Framework Report” that identifies the district or school’s accreditation category and performance and rating on all of the performance indicators.

Based on its accreditation status, each school district and school must adopt and implement a plan, designated as a performance plan, improvement plan, priority improvement plan, or turnaround plan, to be approved by the commissioner of education. §22-11-303-06. A district on a turn-around plan must identify “specific, research-based strategies” to address the identified needs and issues, including employing a “lead turnaround partner”; reorganizing the district oversight and management structure; reorganizing individual schools; hiring an entity to operate one or more district schools; converting one or more district schools to charter schools;

or closing schools. §22-11-3036(3)(d). Every school is required to go through a similar process overseen by their respective boards of education. §§22-11-401, *et seq.* Failure to make defined, substantial progress under a priority improvement or turnaround plan can, at the instance of the CDE and the commissioner, result in a loss of accreditation and reorganization, management takeover by private or public entity, conversion to a charter school, and other remedial action. §22-11-209.

## **IX. CONCLUSION**

Although the standards-based education system intentionally established standards of educational achievement and a method to measure accomplishment of those standards, the finance system has never been adjusted to address the costs of meeting those standards. Although one of the primary purposes of standards-based education was to provide objective measures of achievement that could be costed-out and funded, the two systems have remained out of touch and actually diverging, with no substantial effort to align funding levels with costs.

In recent years, new educational goals linked to school readiness and postsecondary and workforce readiness were mandated, and measurements of school and school district performance with sanction for failures have been implemented as part of accreditation. Again, these changes in the education system have added and will continue to add significantly to the costs of education, but the funding system has been completely unresponsive. As a result, there is not enough money in the system to permit school districts across the State to properly implement standards-based education and to meet the requirements of state law and regulation. This is true for districts of every description – rural, suburban urban and those with small or large

student populations. There is not one school district that is sufficiently funded. This is an obvious hallmark of an irrational system.

The problem has been compounded by the fact that during this same time Colorado and virtually every school district have experienced significant demographic changes, particularly in the number and concentrations of English language learners and at-risk children. The number of children with severely disabling conditions has also grown. There are now significantly larger percentages of students with more expensive educational needs. The educational achievement requirements for these students are the same as for general education students, but the cost to achieve proficiency and growth requirements among these students is much higher. This represents a major source of additional expense that has not been taken into account in the finance system. Once again, the State has not attempted to quantify and fund the costs of providing educational services to these and similarly situated students with special needs.

Finally, budget cuts in the last three years have reduced overall school funding by nearly one billion dollars. Beyond that, in 8 of the last 10 years, the State has used “cuts off the top” of the school funding formula to fund the school finance and assessment functions of the CDE. In any case, current economic conditions are not the source of the school finance crisis. They have made an unworkable situation unconscionable. But Colorado’s history of irrational and inadequate school funding goes back for over two decades.

Respectfully submitted this 25<sup>th</sup> day of July, 2011.

*s/ Alexander Halpern*

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*Original signature of Alexander Halpern is on file in the  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 25<sup>th</sup> day of July, 2011, a true and correct copy of the foregoing PLAINTIFFS' TRIAL BRIEF was served via LexisNexis®, addressed to the following:

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